

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH.**

107

CRM-M-53974-2021.

Date of Decision: 05.01.2022.

Raj Kumar @ Raju

....Petitioner.

Versus

State of Punjab

....Respondent.

CORAM: HON'BLE MR. JUSTICE LALIT BATRA

Present: Mr. Ramesh Sharma, Advocate for petitioner.

Lalit Batra, J.(Oral)

Case has been taken up for hearing through Video Conferencing.

This second petition under Section 438 Cr.P.C. for grant of pre-arrest bail has been moved by petitioner-**Raj Kumar @ Raju** in case FIR No.93 dated 09.06.2018 under Section 22 of NDPS Act, registered at Police Station City Phagwara, District Kapurthala.

Learned counsel for the petitioner *inter alia* contends that allegations levelled in the FIR are altogether false and frivolous and there is no iota of truth therein. He further urges that allegedly on 09.06.2018 contraband i.e. 47 strips each strip containing 30 capsules labelled Jagdol-X (Tramadol Hydrochloride capsules) and 3 strips each strip containing 10 tablets labelled FL-PAM 0.5 (Alprazolam tablets), was recovered from the petitioner. He further urges that as a matter of fact, petitioner is a Chemist having Licence under the name and style of Bhawna Medicos, which is valid upto 22.09.2023. He further submits that petitioner was illegally picked up by the police and confined in Police Station Rawalpindi, whereas

no such contraband, as alleged, was ever recovered from the petitioner. He further submits that compliance of provisions of Section 50 of NDPS Act was not made by the Investigating Agency. He further urges that petitioner is suffering from Acutobronchitis and remained admitted in Sharma Medical Care Centre, near Old Sabzi Mandi, Banga Road, Phagwara, w.e.f. 07.08.2021 to 15.08.2021 for treatment thereof, as is evident from Medical Sickness Certificate dated 12.11.2021 (Annexure P-4). He further submits that though petitioner has no nexus whatsoever with the alleged offence, thus, concession of pre-arrest bail may be extended to him.

Notice of motion.

At the asking of Court, Mr. Mehardeep Singh, Additional Advocate General, Punjab, accepts notice on behalf of respondent-State. Complete copy of paper book has been supplied to him.

Learned State counsel while opposing the cause of petitioner has vehemently argued that in the instant case FIR, on 09.06.2018 contraband i.e. 47 strips each strip containing 30 capsules labelled Jagdol-X (Tramadol Hydrochloride capsules) and 3 strips each strip containing 10 tablets labelled FL-PAM 0.5 (Alprazolam tablets), was recovered from the petitioner. He further urges that two sample parcels of recovered contraband were sent to Forensic Science Laboratory, SAS Nagar, Mohali, and FSL report dated 10.08.2018 (Annexure P-2) shows that ingredients of Tramadol Hydrochloride to the extent of 48.50 mg/capsule was detected in Parcel No.1 (30 capsules of green colour in a strip labelled as Jagdol-X) and ingredients of Alprazolam to the extent of 0.44 mg/tablet was detected in Parcel No.2 (10 tablets of peach colour in a strip labelled as FL-Pam 0.5)

and as such actual weight of recovered 1410 intoxicant capsules containing Tramadol Hydrochloride comes to 358.14 grams and falls in 'commercial quantity'. He further urges that necessary compliance as per provisions of Section 50 of NDPS Act was made by the Investigating Officer. He further urges that vide order dated 25.07.2018 rendered by Sessions Court, petitioner was extended concession of interim bail, however, after having received FSL report, his application for regular bail was dismissed by that Court, vide order dated 30.08.2019. He further urges that application for pre-arrest bail moved by the petitioner was also dismissed by the Trial Court, vide order dated 30.09.2019. He further urges that earlier petition (CRM-M-45132-2019) for grant of pre-arrest bail moved by petitioner was dismissed as withdrawn, vide order dated 08.09.2021 passed by this Court. He further urges that in view of nature of offence committed by the petitioner, he is not entitled to the concession of pre-arrest bail.

I have heard learned counsel for the parties and have carefully gone through the record of the case.

Without commenting anything on the merits of the case, lest it may prejudice the case of either of the parties, allegedly contraband i.e. 47 strips each strip containing 30 capsules labelled Jagdol-X (Tramadol Hydrochloride capsules) and 3 strips each strip containing 10 tablets labelled FL-PAM 0.5 (Alprazolam tablets), was recovered from the petitioner. A bare perusal of the record reveals that though vide order dated 25.07.2018 passed by Sessions Court, petitioner was extended concession of interim bail but later on after having received FSL report and especially the fact that contraband (Tramadol Hydrochloride) was of 'commercial quantity', application for regular bail moved by petitioner was dismissed by

the said Court, vide order dated 30.08.2019.

It should be borne in mind that in a murder case, the accused commits murder of one or two persons, while those persons who are dealing in narcotic drugs are instrumental in causing death or in inflicting death-blow to a number of innocent young victims, who are vulnerable; it causes deleterious effects and a deadly impact on the society; they are a hazard to the society; even if they are released temporarily, in all probability, they would continue their nefarious activities of trafficking and/or dealing in intoxicants clandestinely. Reason may be large stake and illegal profit involved. Even otherwise, Section 37 of NDPS Act creates bar in grant of bail in case involving contraband of 'commercial quantity'.

Pre-arrest bail is not to be granted as a matter of routine/course in all cases. The grant or refusal of such bail depends on the variety of circumstances, the cumulative effect of which, should enter the judicial verdict. The power under Section 438 Cr.P.C. is to be exercised sparingly and in exceptional cases keeping into focus the facts and circumstances of each case. Keeping in view totality of entire scenario and nature of offence, no extra-ordinary ground has been made out in favour of petitioner for his entitlement to pre-arrest bail.

As a sequel to above, instant petition for grant of pre-arrest bail moved by the petitioner is dismissed.

(LALIT BATRA)
JUDGE

05.01.2022

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Whether speaking/ reasoned : Yes/ No
Whether Reportable : Yes/ No